

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 160 OF 2004

Shri. Rajaram Ganpati Shinde ... Petitioner

Versus

The State of Mah. and Ors. ... Respondents

Mr. J.G. Reddy i/by P.K. Dhakephalkar for
Petitioners.

Mr. V.P. Malvankar, A.G.P. for R. Nos. 1 and 2.

Mr. M.V. Limaye with Mr. R.S. Apte for R. Nos. 3
and 4.

**CORAM : F.I. REBELLO &
DR.D.Y.CHANDRACHUD, JJ.**

DATED : JANUARY 31, 2006

P.C.

. The Petitioner is in the employment of Respondent No. 3. The enquiry was conducted against the Petitioner that when he was working as Ward Officer of Majiwade an illegal construction namely four storied building collapsed on 14.12.1995 in which 24 people died and 13 were injured. The charge against the Petitioner was that he had taken no steps for removal of the said illegal construction. The enquiry Officer found the Petitioner guilty. The main defence which the Petitioner set up was that in accordance with the

Commissioner's directions dated 22.7.1993, the action in respect of unauthorised building was to be taken by the Deputy Commissioner and was to be executed to the Encroachments Department, Executive Engineer, and as such the Ward Officer has absolutely no concern about the same. As noted, the enquiry officer rejected the said contention and recommended that the annual increment of the Petitioner should be stopped for two years. Notice was received from the Corporation and the Petitioner was informed that they have proposed to demote the petitioner for the period of three years. The report of the enquiry officer was placed before the General Body. The General Body passed resolution that the charges against the Petitioner were not proved. The resolution of the General Body was not implemented as the Commissioner referred the resolution to the State Government. The State Government by its order dated 21.6.1999 informed the Corporation that the State Government in exercise of its powers under Section 451 of the B.P.M.C. Act, had cancelled the resolution and directed the Corporation to reconsider the resolution. The resolution was reconsidered by the Corporation and it reaffirmed its earlier decision and passed resolution to that effect on 25.10.1999. The

commissioner once against referred the matter to the State Government. The State Government by order dated 30.6.2001 in exercise of powers under Section 451 quashed the resolution and accepted the recommendations of the learned commissioner dated 16.3.2001.

. Subsequent to the decision of the State Government, the Commissioner by his order dated 29.4.2002, demoted the Petitioner for the period of three years. It is this order which is subject matter of the present challenge.

. On behalf of the Petitioner, their learned counsel contends that the State Government had no jurisdiction to set aside the resolution passed by the Corporation. Reliance for that is placed in the case of Ashraf Yusuf Motiwala and anr. Versus State of Maharashtra and Others, 2000 (4) Mh.L.J. 13. Perusal of the facts therein would indicate that it pertains to the election of the committee of the Corporation in respect of which Act itself provides remedies. It is in that context that the learned Division Bench of this court held that the State Government under Section 451 of the B.P.M.C. Act had no authority. In the instant case, we are

dealing with the resolution passed by the Corporation in respect of its employees in the matter of service conditions. Section 451 of the B.P.M.C. Act empowers the State Government if it is of the opinion that the execution of any resolution or order of the Corporation is in contravention of or in excess of the powers conferred under the Act, or any other law for the time being in force, to suspend execution of such resolution or prohibit doing of any act by or in writing. As noted earlier, once there be rules in force as the Corporation has passed resolution, holding the employee not guilty, after finding of the enquiry officer, that employee was guilty and if such resolution was contrary to the provisions of the Act, rules or service conditions, it was always open to the State Government to exercise its powers under Section 451. We are clearly therefore, of the opinion that on the facts of this case, the decision of the State Government fell within the powers conferred upon him under Section 451 of the B.P.M.C. Act.

. The next contention as urged on behalf of the Petitioner is that it was not his duty to remove the illegal construction. The Petitioner was the Ward

Officer in over all charge and supervision of the ward. The enquiry officer based on the material available, came to the conclusion that the Petitioner was guilty of the charge and accordingly proposed the punishment. The Disciplinary authority after following the procedure proposed higher punishment. Once the disciplinary authority based on the material has applied its mind to the material and imposed the punishment after complying with the procedural requirements, it would not be open for this court to consider the proportionality of the punishment imposed considering the high post that the Petitioner held in the Ward.

. As it was argued on behalf of the Petitioner that only he had been singled out and no action has been taken against other officers, we have enquired with the counsel for the respondent Corporation, as to what action has been taken against other employees. The learned counsel on instructions states that four other employees, were chargesheeted and punishment imposed upon them.

. For all the aforesaid reasons, we find no merit in

this petition. Rule discharged. No order as to costs.

(F.I. REBELLO, J.)

(DR. D.Y. CHANDRACHUD, J.)